

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

Thanh Van PHAN
An Thi Tri PHAM

Plaintiffs,

v.

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; MERRICK GARLAND,**
Attorney General of the United States; **ALEJANDRO
MAYORKAS**, Secretary of the Department of
Homeland Security; **UR M. JADDOU**, Director of United
States Citizenship and Immigration Services; **CONNIE
NOLAN**, Associate Director for the Service Center
Operations Directorate; **LOREN K. MILLER**, Director
of the Nebraska Service Center at United States
Citizenship and Immigration Services; **CINDY GOMEZ**,
District 11 Director of United States Citizenship and
Immigration Services; **MARCOS CASTELLS**,
Nashville, Field Office Director of the United
States Citizenship and Immigration Services
Defendants.

Case No.:

JUDGE:

**Complaint for Writ of
Mandamus and Petition
for a Hearing on Plaintiffs',
Mr. Thanh
Van Phan's I-130
Petition for Alien Relative,
for Plaintiff Mrs. An Thi
Tri Pham**

INTRODUCTION

COMES NOW the Plaintiffs, **Thanh Van Phan ("Mr. Phan")**, **An Thi Tri Pham ("Mrs. Pham")**, and by and through their undersigned counsel, and sues the Defendants and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action seeking declaratory, injunctive, and mandamus relief from the Defendants' lack of adjudication of the Plaintiff, Mr. Phan's, I-130 Petition for Alien Relative ("I-130 Petition"), which was received by the United States Citizenship and Immigration Services

(“USCIS”) on or around March 23, 2018. Despite repeated requests to adjudicate the petition, and to the manifest detriment of the Plaintiffs, Mr. Phan and Mrs. Pham, no decision has been rendered on the I-130 Petition. As such, the Plaintiffs bring this suit to compel Defendants to decide on the I-130 Petition that has been pending for more than **six (6) years**.

2. Defendants, the U.S. Attorney General, the U.S. Secretary of Homeland Security, the Director of U.S. Citizenship and Immigration Services (USCIS), the Associate Director for the Service Center Operations Directorate, the Director of the USCIS Nebraska Service Center, the USCIS District 11 Director for New Orleans, Louisiana with jurisdiction over Nashville, Tennessee and the Field Office Director of the Nashville, Tennessee USCIS field office are charged by law with the statutory obligation to adjudicate a Petition for Alien Relative.

3. Plaintiff Mr. Phan applied for an I-130 Petition on behalf of Plaintiff Mrs. Pham pursuant to INA 201(2)(A)(i).

4. Defendants have refused to adjudicate Plaintiff Mr. Phan ’s I-130 Petition.

5. This action challenges the Defendants' failure to act in violation of the law.

JURISDICTION AND VENUE

6. Jurisdiction is conferred upon this Court by 28 U.S.C § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); 28 U.S.C. § 1361 (jurisdiction to compel an officer to perform a duty owed to Plaintiff); 5 U.S.C. § 702 (Administrative Procedure Act waiver of sovereign immunity); 5 U.S.C. § 704 (no other adequate remedy) and 5 U.S.C § 706 (compel agency action unlawfully withheld or unreasonably delayed).

7. Declaratory judgment is sought pursuant to 28 U.S.C. § 2201 (creation of remedy) and 28 U.S.C. § 2202 (further relief).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) or 28 U.S.C. § 1391(e) (United States Defendant resides in this district) or (a substantial part of the events or omissions giving rise to the claim occurred) or (the Plaintiff resides in this district and no real property is involved in this action.)

PARTIES

9. Plaintiff, Thanh Van Phan, is a United States citizen. Plaintiff, Mrs. An Thi Tri Pham, a native and citizen of Vietnam, is Mr. Phan's spouse. See *Exhibit A*. The Plaintiffs reside at 3408 Harbor Hill Pl, Nashville, Tennessee 37214.

10. Mr. Phan submitted an I-130 Petition on or around March 23, 2018. See *Exhibit B*. When he submitted the I-130 Petition, the median processing time for all USCIS Field Offices to process filed I-130 Petitions in the Fiscal Year of 2018 was **7.6 months**. See *Exhibit D*. Copies of Plaintiff, Mrs. Pham's Passport Biometric Page, Plaintiff Mr. Phan's Birth Certificate, the Plaintiffs' marriage certificate, Receipt Notice for the I-130, the Historical National Median Processing Time (in Months) for all USCIS Offices for Select Forms by Fiscal Years 2013 to 2018 and 2016 to 2024 are enclosed herein.

11. Defendant MERRICK GARLAND is sued in his official capacity as the Attorney General of the United States. In that capacity, he has the sole authority to adjudicate Plaintiff Mr. Phan's I-130 Petition pursuant to INA 201(b)(2)(A)(i).

12. Defendant ALEJANDRO MAYORKAS is sued in his official capacity as the United States Secretary of the Department of Homeland Security. In that capacity he has responsibility for the administration and enforcement of the immigration laws.

13. Defendant UR M. JADDOU is sued in her official capacity as the Director of the United States Citizenship and Immigration Services, an agency of the Department of Homeland Security

responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services, policies, and priorities, including, *inter alia*, adjudication of I-130, petitions for Alien Relatives. In that capacity, she is responsible for the administration of USCIS and the implementation of the immigration laws of the United States.

14. Defendant CONNIE NOLAN sued in her official capacity as the Associate Director for the Service Center Operations Directorate, an agency of the Department of Homeland Security responsible for the operations of all USCIS Service Centers and impliedly, for the administration of immigration processing functions, including, *inter alia*, processing of I-130, Petitions for Alien Relatives.

15. Defendant LOREN K. MILLER is sued in his official capacity as the Director for the Nebraska Service Center at United States Citizenship and Immigration Services, an agency of the Department of Homeland Security responsible for the administration of immigration processing functions, including, *inter alia*, processing of petitions to register permanent residence or adjust status.

16. Defendant CINDY GOMEZ is sued in her official capacity as the Director of the USCIS, District 11, which is in charge of the Plaintiffs' local office, Nashville, Tennessee Field Office. In that capacity she is responsible for the adjudication of the Plaintiffs' I-130 Petition for Alien Relative.

17. Defendant MARCOS CASTELLS is sued in his official capacity as the Field Office Director ("FOD") in Charge of the Nashville, Tennessee Field Office. In that capacity he is responsible for the adjudication of Plaintiff's I-130 Petition for Alien Relative.

18. USCIS is the agency responsible for the administration of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et. seq.*, including, but not limited to, the statutory obligation to adjudicate I-130, Petitions for Alien Relative.

THE STATUTORY AND REGULATORY BACKGROUND

19. The Administrative Procedures Act, 5 U.S.C. § 701 *et. seq.* allows for a cause of action against Defendants when they have taken arbitrary and capricious action, an abuse of discretion, and not in accordance with the law. Here, Defendants have failed to make a determination on Plaintiffs' I-130 Petition filed on or around March 23, 2018. Defendants have failed to adjudicate and notify the Plaintiffs whether the I-130 Petition has been granted or denied.

STATEMENT OF THE FACTS

20. Plaintiff, Mr. Phan, is a United States citizen. Plaintiff, Mrs. An Thi Tri Pham, is Mr. Phan's spouse, a native and citizen of Vietnam. The Plaintiffs reside at 3408 Harbor Hill Pl, Nashville, Tennessee 37214.

21. Plaintiff, Mr. Phan submitted an I-130 Petition for his spouse, Mrs. Pham, on or around March 23, 2018. When he submitted the I-130 Petition, the median processing time for all USCIS Field Offices to process filed I-130 Petition in the Fiscal Year of 2018 was **7.6 months**. See *Exhibit C*.

22. Since the beginning of 2023, Plaintiffs have made numerous inquiries concerning the status of their I-130 Petition through the USCIS hotline at 1 (800) 375-5283 and the E-Request feature on www.uscis.gov. See. **Exhibit B**, *USCIS E-requests and Responses*. (pp. 7-14). Moreover, motions for a Status Update were served upon the Department of Homeland Security nearly two years prior.

23. Defendants have a duty to adjudicate I-130 Petitions within a reasonable time. *See* 5 U.S.C. § 555(b) (“With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude the matters presented to it.”); 5 U.S.C. § 706(1) (providing that courts shall compel an agency to perform an “action unlawfully withheld or unreasonable delayed.”).

24. Despite the clear intent of Congress, Defendants have maintained, and continue to maintain, a practice that denies Plaintiffs the rights secured to them pursuant to the relevant statutes and Defendants’ own regulations. Despite the statutory and regulatory mandate and Plaintiffs’ numerous inquiries, Defendants have failed to process the Plaintiffs’ I-130 Petition and inform them if it is granted or denied.

25. As a result of the Defendants’ practices, the Plaintiffs have waited more than **six (6) years** for adjudication and decision on the I-130 Petition.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Plaintiffs have exhausted all administrative remedies. Plaintiffs made inquiries concerning the status of the I-130 Petition through the USCIS Hotline at 1 (800) 375-5283 and the E-Request feature on www.uscis.gov. *See Exhibit D*. Additionally, motion for a Status Update was served on the Department of Homeland Security, pursuant to File No. A-207-641-159, before the Los Angeles, California Immigration Court on or about February 7, 2019, and nearly a year later on February 11, 2020. *Id.*

27. Plaintiffs seek an order compelling Defendants to act according to law, and due to their failure to do so, that this Honorable Court exercise jurisdiction over the Plaintiffs’ I-130 Petition.

There is no other administrative relief available to the Plaintiffs. As such, the Plaintiffs have exhausted all administrative remedies.

28. There has been no prior judicial review of this matter.

IRREPARABLE INJURY

29. Plaintiffs Mr. Phan and Mrs. Pham have suffered, are suffering, and will continue to suffer irreparable injury unless this Honorable Court orders equitable relief. Such injury includes deprivation of the substantial and unique immigrant benefit for the Plaintiff Mrs. Pham. Plaintiff Mrs. Pham has also been deprived of her immigrant benefits, including, *inter alia*, the right to enter and remain in the United States, freedom of movement and travel, and the protection of the United States government when outside the United States.

COUNT I

UNLAWFUL VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

30. Plaintiffs, repeat and re-allege each of the allegations in paragraphs 1 through 29 as if the same were incorporated herein in full.

31. Defendants have violated, and continue to violate, 8 U.S.C. § 1154, and 8 C.F.R §§ 204.1, 204.2 by failing to make a fair determination on Plaintiffs' I-130 Petition and the supporting documentation that was filed with the Defendants.

COUNT II

VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

32. Plaintiffs repeat and re-allege each of the allegations in paragraphs 1 through 29 as if fully set forth herein.

33. Defendants violated the Administrative Procedures Act, 5 U.S.C. § 701 et. seq. in that they have taken arbitrary and capricious action, an abuse of discretion, and not in accordance with the law.

34. The Defendants have failed to make a fair determination on Plaintiffs' I-130 Petition based on case law.

35. As a result of the Defendants' violation of 8 U.S.C. § 1154, and 8 C.F.R §§ 204.1, 204.2, the Plaintiffs have been unlawfully deprived of a favorable determination on their I-130 Petition.

36. Due to the failure of the Defendants to accurately process Plaintiff, Mr. Phan 's, I-130 Petition, as a result, Plaintiff Mrs. Pham has been unlawfully deprived of the opportunity to timely obtain the unique and substantial immigrant benefits.

37. Moreover, the Administrative Procedure Act imposes a duty on the Defendants to act on the Plaintiff's petition within a reasonable time period, pursuant to 5 U.S.C. § 555(b).

COUNT III

IRREPARABLE INJURY

38. Plaintiffs repeat and re-allege each of the allegations in paragraphs 1 through 29 as if the same were incorporated herein in full.

39. Plaintiffs' need is both immediate and compelling. Defendants' failure to act in a timely fashion has prejudiced the Plaintiffs.

40. As a result of the Defendants' failure to perform their duty, pursuant to 8 U.S.C. § 1154, and 8 C.F.R §§ 204.1, 204.2, to make a fair, non-arbitrary, and absent of abuse of discretion determination on the Plaintiffs' I-130 Petition, has caused the Plaintiffs to have suffered, are suffering, and will continue to suffer irreparable harm. Plaintiffs have suffered protracted and unconscionable delays in determining their I-130 Petition favorably. Plaintiffs have suffered

grievously as a result of these delays. Plaintiffs have also been subject to the uncertainty engendered by their inability to obtain immigrant benefits for Plaintiff Mrs. Pham.

RELIEF REQUESTED

WHEREFORE, Plaintiffs, Mrs. Pham and Mr. Phan, pray that this Honorable Court grants them the following relief:

1. Accept jurisdiction over this action;
2. Declare as unlawful the violation by the Defendants of 8 U.S.C. § 1154, as well as 8 C.F.R §§ 204.1, 204.2, by failing to make a non-arbitrary determination that lacks abuse of discretion on Plaintiffs' I-130 Petition.
3. Issue an order in the nature of mandamus requiring the Defendants to adjudicate Plaintiffs' I-130 Petition according to the corresponding binding case law.
4. Accept jurisdiction over Plaintiffs' I-130 Petition and grant this petition for a hearing thereon, adjudicating the petition on its merits.
5. Award Plaintiffs their suit money, costs, and attorney's fees incurred as a result of bringing this action.
6. Grant such further relief as Plaintiffs may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Linh Do

Linh Do

(Pending *pro hac vice* admission)

Attorney for Plaintiffs

Georgia Bar No. 891155

DO LAW OFFICE

4500 Satellite Blvd., Suite 1160

Duluth, Georgia 30096

Phone: (678) 224-8940

Fax: (678) 224-8967

linh@dolawoffice.com

/s/ Neely Baugh-Dash

Neely Baugh-Dash

Co-Counsel for the Plaintiffs

Bar #038606

Rose Immigration Law Firm, PLC

105 Westpark Drive, Suite 330

Brentwood, Tennessee 37027

615-321-2256

ndash@roseimmigration.com

Date: June 24, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing will be served in person by an authorized process server on all counsel or parties of record on the Service List below within the time limits allowed by the Federal Rules of Civil Procedure.

/s/**Linh Do**

Georgia Bar No. 891155

linh@dolawoffice.com

SERVICE LIST

Neely Baugh-Dash, Esq.

Co-Counsel for the Plaintiffs

Bar #038606

Rose Immigration Law Firm, PLC

105 Westpark Drive, Suite 330

Brentwood, Tennessee 37027

United States Citizenship and Immigration Services

Office of the Chief Counsel

5900 Capital Gateway Drive Mail Stop 2120

Camp Springs, MD 20588-0009

MERRICK GARLAND

Attorney General of the United States

950 Pennsylvania Avenue, NW

Washington, D.C. 20530-0001

ALEJANDRO MAYORKAS, Secretary of the Department of Homeland Security

Office of the General Counsel

U.S. Department of Homeland Security

2707 Martin Luther King Jr. Ave, SE

Washington, DC 20528-0485

UR. M. JADDOU, Director,

United States Citizenship and Immigration Services

Office of the Chief Counsel

5900 Capital Gateway Drive Mail Stop 2120

Camp Springs, MD 20588-0009

CONNIE NOLAN, Associate Director for the Service Center Operations Directorate

United States Citizenship and Immigration Services

Office of the Chief Counsel

5900 Capital Gateway Drive Mail Stop 2120

Camp Springs, MD 20588-0009

LOREN K. MILLER, Director,

United States Citizenship and Immigration Services, Nebraska Service Center

Office of the Chief Counsel

5900 Capital Gateway Drive Mail Stop 2120

Camp Springs, MD 20588-0009

CINDY GOMEZ, District 11 Director,

United States Citizenship and Immigration Services, Seattle Office of the Chief Counsel

Office of the Chief Counsel

5900 Capital Gateway Drive Mail Stop 2120
Camp Springs, MD 20588-0009

MARCOS CASTELLS, Nashville Field Office Director,
United States Citizenship and Immigration Services,
Office of the Chief Counsel
5900 Capital Gateway Drive Mail Stop 2120
Camp Springs, MD 20588-0009

/s/ Linh Do

Linh Do, Esq.

Table of Contents

<u>Exhibits</u>	<u>Significance of Document</u>
A.	Plaintiff Mrs. Pham's Passport Biometric Page, Plaintiff Mr. Phan 's Birth Certificate, Certificate of Marriage
B.	I-130 Receipt Notice
C.	Historical National Median Processing Time (in Months) for all USCIS Offices for Select Form by Fiscal Years 2013 - 2018 & 2016 – 2024
D.	Status Update Requests